

**RESOLUTION OF BOARD OF TRUSTEES
ADOPTING PROCUREMENT POLICIES AND PROCEDURES**

WHEREAS, the Maryland Health Benefit Exchange Act of 2011 (“the Exchange Act”) directs the Board of Trustees of the Maryland Health Benefit Exchange to adopt written policies and procedures governing all procurements of the Exchange, *see* Md. Code Ann., Ins. §31-106(f); and

WHEREAS, the Exchange Act mandates that the Exchange’s procurement policies shall comport with Title 12, Subtitle 4 of the State Finance and Procurement Article and Title 14, Subtitle 3 of the State Finance and Procurement Article, but that the Exchange otherwise is not subject to Division II of the State Finance and Procurement Article; and

WHEREAS, the Exchange Act further mandates that the Exchange’s procurement policies shall, to the fullest extent practicable, and in a manner that does not impair the Exchange’s ability to carry out the purposes for which it was created, establish an open and transparent process that (1) promotes public confidence in the Exchange’s procurements; (2) ensures the fair and equitable treatment of all persons and entities that participate in the Exchange’s procurement system; (3) fosters appropriate competition and provides safeguards for maintaining a procurement system of quality and integrity; (4) promotes increased economic efficiency and responsibility on the part of the Exchange; (5) achieves the maximum benefit from the Exchange’s purchasing power; and (6) provides clarity and simplicity in the rules and procedures governing the Exchange’s procurements; and

WHEREAS, the Board of Trustees, at its initial meeting on June 3, 2011, adopted an Interim Policy for the procurement of assistance in developing and conducting the studies mandated in Section 5 of the Exchange Act and required to be completed by December 23, 2011, but did not adopt a comprehensive policy addressing all procurements undertaken by the Exchange;

NOW, THEREFORE, BE IT RESOLVED that the Board of Trustees hereby adopts, as its policy governing the procurements of the Exchange, the document entitled Maryland Health Benefit Exchange Procurement Policies and Procedures, attached hereto as **Exhibit A**.

I HEREBY CERTIFY that the foregoing Resolution was adopted on this 27th day of June, 2011, by the Board of Trustees of the Maryland Health Benefit Exchange.

Joshua M. Sharfstein, Chair

MARYLAND HEALTH BENEFIT EXCHANGE PROCUREMENT POLICIES AND PROCEDURES

I. INTRODUCTION AND STATEMENT OF PURPOSE

A. These Procurement Policies and Procedures are intended to establish an open and transparent procurement process for the Maryland Health Benefit Exchange (“the Exchange”) that (1) promotes public confidence in the Exchange’s procurements; (2) ensures the fair and equitable treatment of all persons and entities that participate in the Exchange’s procurement system; (3) fosters appropriate competition and provides safeguards for maintaining a procurement system of quality and integrity; (4) promotes increased economic efficiency and responsibility on the part of the Exchange; (5) achieves the maximum benefit from the Exchange’s purchasing power; and (6) provides clarity and simplicity in the rules and procedures governing the Exchange’s procurements.

B. Under § 31-103 of the Insurance Article of the Maryland Code, the Exchange is subject to the provisions of State law governing procurement by “exempt units,” *see* Md. Code Ann., State Fin. & Proc. § 12-401 *et seq.*, and establishing requirements and guidelines for minority business participation in procurement, *see id.* § 14-301 *et seq.* These Procurement Policies and Procedures, and the applicable provisions of State law, govern all procurements undertaken by the Exchange, except as set forth in Section X, below.

II. METHODS OF PROCUREMENT

Except as noted in Section X, below, all procurements by the Exchange shall be awarded by one of the following methods:

- A. Competitive Sealed Bidding
- B. Competitive Sealed Proposals
- C. Expedited Procurement
- D. Emergency Procurement
- E. Sole Source Procurement
- F. Simplified Methods for Small Procurements
- G. Inter-Governmental Procurement

Subject to the limitations set forth below, the Executive Director of the Exchange shall have authority to select the method of procurement that best serves the needs of

the Exchange and achieves the purposes of these Procurement Policies and Procedures.

A. Competitive Sealed Bidding

1. Competitive sealed bidding is a competitive method of procurement and shall be used where (a) the award will be made on the basis of price and other price-related factors, (b) it will not be necessary to conduct negotiations with offerors, (c) time permits the solicitation, submission and evaluation of sealed bids, and (d) there is a reasonable expectation of receiving more than one bid.

2. Each invitation for bids shall be in writing, shall be in a form approved by the Executive Director, shall establish a process for the evaluation of bids, and shall identify the factors on which the contract will be awarded.

3. Each invitation for bids shall be published on eMaryland Marketplace and the website of the Exchange and shall be advertised in any other reasonable manner that would promote competition and transparency in the procurement process as determined by the Executive Director or a procurement officer designated by the Executive Director. The Executive Director or designated procurement officer may solicit bids directly from any vendor.

4. The Executive Director shall ensure that there is reasonable time, after publication of an invitation for bids, for potential bidders to prepare and submit bids.

5. Prequalification of bidders may be required.

6. Bids must be submitted in a sealed envelope marked with the bidder's name. All bids shall be publicly opened at the time and place stated in the request.

7. Contracts shall be awarded with reasonable promptness after the date of bid opening according to the process established in the invitation for bids and based on the factors identified in the invitation for bids.

8. All bids may be rejected if the Board of Trustees or the Executive Director determines that it is in the Exchange's best interest to do so.

B. Competitive Sealed Proposals

1. Competitive sealed proposals is a competitive method of procurement and may be used where the award will be made on factors that include but are not

limited to price, and where time permits the solicitation, submission and evaluation of sealed proposals.

2. Each request for proposals shall be in writing, shall be in a form approved by the Executive Director, shall establish a process for the evaluation of proposals, and shall identify the factors on which the contract will be awarded.

3. Each request for proposals shall be published on eMaryland Marketplace and the website of the Exchange and shall be advertised in any other reasonable manner that would promote competition and transparency in the procurement process as determined by the Executive Director or a procurement officer designated by the Executive Director. The Executive Director or designated procurement officer may solicit proposals directly from any vendor.

4. The Executive Director shall ensure that there is reasonable time, after publication of a request for proposals, for potential offerors to prepare and submit proposals.

5. The Executive Director or designated procurement officer may conduct discussions or negotiations with any offeror after the receipt of proposals. The person conducting the discussions or negotiations shall keep a record of all such communications and shall treat all offerors fairly in conducting discussions or negotiations.

6. The Executive Director or designated procurement officer may request that offerors revise their proposals by submitting a best and final offer or a series of best and final offers.

7. Contracts shall be awarded according to the process established in the request for proposals and based on the factors identified in the request for proposals.

8. All proposals may be rejected if the Board of Trustees or the Executive Director determines that it is in the Exchange's best interest to do so.

C. Expedited Procurement

1. Expedited procurement is a competitive procurement method and may only be used after a written determination, by the Executive Director or a procurement officer designated by the Executive Director that urgent circumstances make it

impractical for a procurement to be undertaken through more formal competitive procurement methods.

2. The urgent circumstances under which an expedited procurement may be undertaken include the need to make progress toward compliance with long-range deadlines set forth in federal or State law, in policy guidance from a federal or State agency, or in the terms of a grant received by the Exchange, where the use of more formal procurement methods would prevent the Exchange from making adequate progress toward compliance.

3. Each solicitation shall be in writing and shall be in a form approved by the Executive Director.

4. Each solicitation shall be published on eMaryland Marketplace and the website of the Exchange and shall be advertised in any other reasonable manner that would promote competition and transparency in the procurement process as determined by the Executive Director or designated procurement officer. The Executive Director or designated procurement officer may also solicit responses directly from any vendor.

5. The Executive Director shall ensure that responses are received and evaluated in the manner best suited to maximize competition and transparency, consistent with the urgent circumstances presented.

6. The Executive Director or designated procurement officer may conduct discussions or negotiations with any offeror after the receipt of responses. The person conducting the discussions or negotiations shall keep a record of all such communications and shall attempt to treat all offerors fairly in conducting discussions or negotiations, consistent with the urgent circumstances presented.

7. Contracts shall be awarded according to any process established in the solicitation and based on any factors identified in the solicitation, and, in any event, to the offeror whose response is deemed most advantageous to the Exchange under the urgent circumstances of the procurement.

8. All responses may be rejected if the Board of Trustees or the Executive Director determines that it is in the Exchange's best interest to do so.

D. Emergency Procurement

1. Emergency procurement is a non-competitive procurement method and may only be used after a written determination, by the Executive Director or a procurement officer designated by the Executive Director, that it is not possible to undertake a competitive procurement because of an emergency requiring the Exchange to (a) protect the public health, safety or welfare; (b) preserve or protect the Exchange's property or systems; or (c) mitigate a threat to the continuation of services provided by the Exchange.

2. An emergency procurement shall be limited to the procurement of only the types and quantities of goods or services needed to meet the immediate emergency and shall not be used to meet long-term requirements.

3. The Executive Director, or a procurement officer designated by the Executive Director, shall solicit responses from as many vendors as practicable and shall ensure that any emergency procurement is undertaken with the maximum amount of transparency consistent with the circumstances of the emergency.

4. The Executive Director or designated procurement officer shall seek the most favorable price and the most favorable terms and conditions that can be obtained under the circumstances of the emergency.

5. Contracts shall be awarded to the offeror whose response is deemed most advantageous to the Exchange under the circumstances of the emergency.

E. Sole Source Procurement

1. Sole source procurement is a non-competitive procurement method and may only be used after a written determination, by the Executive Director or a procurement officer designated by the Executive Director, that there is only one source for goods or services that the Exchange requires.

2. The Executive Director shall ensure that sole source procurement is used only in circumstances in which it is both necessary and in the best interest of the Exchange.

3. The Executive Director or designated procurement officer shall use a letter to request a proposal for a sole source procurement. The letter shall refer to, or attach, the terms and conditions of a proposed contract.

4. The Executive Director or designated procurement officer shall negotiate with the source of the procurement for the most favorable price and the most favorable terms and conditions that can be obtained.

5. A contract may be awarded where, based on the negotiated price and terms and conditions, it is in the best interest of the Exchange to award the contract.

6. The Executive Director or designated procurement officer shall take action whenever possible to avoid the need to continue to procure the same goods or services without competition.

F. Simplified Methods for Small Procurements.

1. For contracts valued at less than \$75,000, a simplified competitive method may be used that does not incorporate all of the elements of a formal competitive procurement.

2. Each solicitation shall be in writing and shall be in a form approved by the Executive Director or a procurement officer designated by the Executive Director.

3. Each solicitation shall be published on eMaryland Marketplace and the website of the Exchange and shall be advertised in any other reasonable manner that would promote competition and transparency in the procurement process as determined by the Executive Director or designated procurement officer. The Executive Director or designated procurement officer may solicit responses directly from any vendor.

4. The Executive Director shall ensure that responses are received and evaluated in a manner that promotes competition and transparency and that is fair to all offerors.

5. The Executive Director or designated procurement officer may conduct discussions or negotiations with any offeror after the receipt of responses and shall attempt to treat all offerors fairly in conducting discussions or negotiations.

6. Contracts shall be awarded to the offeror whose response is deemed most advantageous to the Exchange.

7. All responses may be rejected if the Executive Director or designated procurement officer determines that it is in the Exchange's best interest to do so.

8. For contracts valued at less than \$15,000, competitive selection is preferred, but not required. For such contracts, the procurement shall be considered a competitive procurement if the Executive Director, or a procurement officer designated by the Executive Director, orally solicits and obtains responses from at least two vendors. The Executive Director or designated procurement officer may award a contract when it is in the best interest of the Exchange to do so.

9. Contracts may not be artificially divided for the purpose of bringing them within the dollar ranges in which these Procurement Policies and Procedures permit the use of simplified procurement methods.

G. Inter-Governmental Procurement and Cooperative Purchasing

1. When it is in the best interest of the Exchange, the Exchange may, without competition, enter into an agreement to procure goods or services from an agency or unit of (a) the State of Maryland, (b) a political subdivision of the State of Maryland, (c) the federal government, or (d) another state government, including another state's health benefits exchange.

2. When it is in the best interests of the Exchange, the Exchange may, without competition, enter into an inter-governmental cooperative purchasing agreement, as that term is defined in § 13-110(a)(4) of the State Finance and Procurement Article.

3. Any inter-governmental agreement described in this Paragraph II.G valued at \$200,000 or more may be approved only by vote of the Board of Trustees. The Executive Director shall have authority to approve any such agreement valued at less than \$200,000; a procurement officer designated by the Executive Director shall have authority to approve any such agreement valued at less than \$25,000.

III. CONTRACT APPROVAL AUTHORITY AND REPORTING REQUIREMENTS

A. Where a competitive method of source selection has been utilized, the Executive Director shall have authority to award any contract valued at less than \$200,000; any contract valued at \$200,000 or more may only be awarded by vote of the Board of Trustees.

B. Where a noncompetitive source selection method other than emergency procurement has been utilized, the Executive Director shall have authority to award

any contract valued at less than \$50,000; any contract valued at \$50,000 or more may only be awarded by vote of the Board of Trustees.

C. The Executive Director may award any contract where the emergency procurement method has been properly utilized and where the emergency does not permit the Executive Director to obtain the prior approval of the Board of Trustees.

D. A contract valued at less than \$25,000 may be awarded by a procurement officer designated by the Executive Director.

E. The Executive Director shall report to the Board of Trustees, at the next regular meeting of the Board following the award of any contract, (a) the award of any contract valued at \$25,000 or more, and (b) the award of any contract valued at \$10,000 or more where a noncompetitive method of source selection has been utilized.

F. At each annual meeting of the Board of Trustees, the Executive Director shall present a written report identifying all contracts awarded by the Exchange in the preceding year.

IV. MINORITY BUSINESS PARTICIPATION

A. All procurements shall comply with Subtitle 3 of Title 14 of the State Finance and Procurement Article, which governs minority business participation in procurement.

B. The Executive Director shall designate a liaison officer for minority business participation, who shall coordinate agency outreach to the minority business community and review the Exchange's contracting to ensure compliance with the law governing minority business participation.

V. CONTRACT REQUIREMENTS

A. All contracts shall be in writing and shall be in a form approved by the Executive Director. Contracts valued at less than \$10,000 may be in the form of a purchase order.

B. Term contracts are limited to a maximum initial term of three years, with renewal options for a maximum combined total of five years.

C. All contracts valued at \$10,000 or more shall include a provision stating that contracts awarded in violation of these Procurement Policies and Procedures shall be voidable at the election of the Exchange.

D. The Board may from time to time identify additional mandatory provisions for all contracts or for certain categories of contracts and may do so either by amending these Procurement Policies and Procedures or by adopting a separate policy concerning contract terms.

VI. CONTRACT MODIFICATIONS

The Executive Director, or a procurement officer designated by the Executive Director, may agree on behalf of the Exchange to agree to the modification of the terms of a contract. For modifications valued at \$50,000 or more, prior approval of the Board of Trustees is required. The Executive Director may approve any modification valued at less than \$50,000; a designated procurement officer may approve any modification valued at less than \$25,000.

VII. BID PROTESTS

A. Time Restrictions

1. A protest based upon alleged improprieties in a solicitation that are apparent before bid opening or the closing date for receipt of proposals must be submitted to the Executive Director before bid opening or the closing date for receipt of proposals.

2. In all other cases, protests must be submitted to the Executive Director not later than seven days after the basis for protest is known, or should have been known, whichever is earlier.

B. Form and Content of Protest

1. Any protest must be submitted in writing and must be addressed to the Executive Director.

2. Any protest must include the name and address of the protestor; appropriate identification of the procurement; a statement of the reasons for the protest; and supporting exhibits, evidence, or documents to substantiate the reasons for the protest.

C. Decision of Executive Director or Procurement Officer

1. The Executive Director may deny any bid protest (a) received after the time periods set forth in Paragraph VII.A, or (b) lacking the required elements set forth in Paragraph VII.B.

2. With regard to all other bid protests, the Executive Director or a procurement officer designated by the Executive Director shall resolve the protest.

3. The Executive Director or designated procurement officer(a) may notify other interested parties of the existence of the protest and may obtain the views of other interested parties, and (b) may conduct discussions or negotiations with the protestor or with other interested parties and attempt to resolve the protest by agreement.

4. The Executive Director or designated procurement officer shall issue a written decision resolving any bid protest that cannot be resolved by agreement.

5. For bid protests associated with contracts valued at less than \$75,000, or with a procurement in which the contract is reasonably anticipated to be valued at less than \$75,000, the decision of the Executive Director or designated procurement officer is final.

D. Appeal

1. Except in cases where, as set forth above, the decision of the Executive Director or designated procurement officer is final, a protestor may appeal from the decision of the Executive Director or designated procurement officer to the Board of Trustees. The appeal must be in writing, must be addressed to the Chair of the Board of Trustees, must identify each ground on which the protestor claims that the protest was resolved in error, and must include a copy of the initial protest and the decision of the Executive Director or designated procurement officer resolving the protest. Appeals must be postmarked within 10 days after issuance of the decision resolving the protest. Ten copies of all required materials must be submitted.

2. The Board of Trustees may deny any appeal (a) received after the time periods set forth in Paragraph VII.D.1, or (b) lacking the required elements set forth in Paragraph VII.D.1.

3. The Board of Trustees may determine that a hearing would assist in the resolution of any appeal. The Board may elect to hold the hearing itself or may refer the matter for a hearing and recommended decision to a member of the Board, to a panel consisting of two or more members of the Board, or to another impartial decision-maker, such as the Office of Administrative Hearings.

4. A final decision resolving the appeal will be issued by vote of the Board of the Trustees.

E. Award Pending Protest

The Board of Trustees may vote to award a contract before there is a final decision of the Exchange resolving a bid protest. Otherwise, a contract shall not be awarded during the pendency before the Exchange of a bid protest related to that contract.

F. Resolution of Protest

In resolving a bid protest, the Board of Trustees, Executive Director or designated procurement officer may (a) deny the protest, (b) sustain the protest but nonetheless determine that the procurement should proceed, consistent with Paragraph VIII.B, below, or (c) sustain the protest and declare a contract to be void, order that all bids be re-evaluated for award, order that a solicitation be re-issued, or require that any other action be taken that fairly addresses the protest.

VIII. CONTRACTS VOIDABLE FOR NONCOMPLIANCE

A. If the Board of Trustees or a person with authority to award a contract under these Procurement Policies and Procedures finds that a procurement violates these Policies and Procedures, or that a contract has been awarded in violation of these Policies and Procedures, the Board or person with authority may order that any action be taken to resolve the violation and may declare void a contract awarded in violation of these Policies and Procedures.

B. Alternatively, the Board or person with authority may determine that a procurement should proceed, or that a contract should not be declared void, notwithstanding a violation of these Procurement Policies and Procedures, if (a) the parties acted in good faith, (b) proceeding with the procurement or ratification of the contract would not undermine the purposes of these Policies and Procedures, (c) the violation was insignificant or otherwise did not prevent substantial compliance with

these Policies and Procedures, and (d) proceeding with the procurement or ratification would be in the best interests of the Exchange.

IX. AUTHORITY OF CHAIR PRIOR TO APPOINTMENT OF EXECUTIVE DIRECTOR

Prior to the appointment of an Executive Director, the Chair of the Board of Trustees shall have authority to take any action that these Procurement Policies and Procedures authorize the Executive Director to take, including the designation of a procurement officer in any circumstance where the Executive Director is authorized to designate a procurement officer.

X. STATUS OF JUNE 3, 2011 INTERIM POLICY FOR PROCUREMENT OF STUDIES

The Interim Policy for Procurement of Studies Mandated in Maryland Health Benefit Exchange Act of 2011, adopted by the Board of Trustees on June 3, 2011, shall remain in effect until December 23, 2011, the date by which the studies mandated in Section 5 of the Exchange Act must be completed, except that (a) the Chair may delegate to the Executive Director any authority or responsibility delegated to the Chair under the Interim Policy; (b) if the Board, the Chair, or the Executive Director determines that the Exchange has failed to obtain the required assistance through a procurement undertaken in accordance with the Interim Policy, a new procurement may be undertaken in accordance with these Procurement Policies and Procedures; and (c) if the Executive Director determines, after June 27, 2011, that assistance beyond that sought pursuant to the Interim Policy is required for timely completion of the studies mandated in Section 5 of the Exchange Act, the procurement of such additional assistance shall be undertaken in accordance with these Policies and Procedures.

XI. ANNUAL REPORT

In the annual report or reports prepared pursuant to § 31-111(c) of the Insurance Article of the Maryland Code and Article VIII, Section 3 of the Bylaws of the Board of Trustees, the Executive Director shall include a list of all contracts awarded by the Exchange valued at \$200,000 or more, the persons or entities to which the contract was awarded, the purpose of the contract, and the amount of the contract.